

December 10, 2010

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SUBJECT: Proposed Emergency Regulations to Implement the Process Water Provisions of the Water Conservation Act of 2009 (SBX7 7)

Dear Mr. Frame and Office of Administrative Law Reference Attorney:

CTIA-The Wireless Association® representing the wireless communications industry has significant concerns about the proposed emergency regulation to implement the process water provisions of SBX7 7, The Water Conservation Act of 2009 (“proposed regulation”). As drafted, it is not clear how the proposed regulation applies to the communications industry, which provides services crucial to public health and safety, including emergency 911 services. Because SBX7 7 expressly states that it should not be construed or enforced to interfere with laws protecting public health and safety, we respectfully request that the proposed regulation be revised to protect process water used to provide communications services.

1. The Proposed Regulation should be clarified to ensure that it does not interfere with federal, state, or local laws protecting public safety, consistent with SBX7 7.

To be valid, a regulation must be derived from statutory authority and be consistent with the statute that it purports to implement. (Government Code § 11342.2.) SBX7 7 (Chapter 4, Statutes of 2009-10 Seventh Extraordinary Session) states that its provisions are not to be construed or enforced to interfere with laws protecting public health and safety: “This part shall not be construed or enforced so as to interfere with . . . any requirement or standard for the protection of public health, public safety, or worker safety established by federal, state, or local government.” (California Water Code § 10608.26(d)(2).)

Here, the proposed regulations establish criteria and methods for excluding process water from calculation of water reduction targets that urban retail water suppliers must set forth in their new water management plans which are due July 1, 2011. However, these exclusions apply only to process water that is used by those engaged primarily in manufacturing and research and development. Although there is also explicit statutory language protecting public health and safety interests, the proposed regulations do not provide any protections for process water used by providers of communications services that are critical to public health and safety. Process water can be essential to the daily operation and cooling of a vast network of communications equipment and data processors needed to provide both landline and wireless communications services.

Therefore, to ensure consistency with the public health and safety protections established by SBX7 7, the proposed regulations should be clarified to provide guidelines that allow for exclusion or protection of process water used by the communications industry.

2. Communications services merit regulatory protection pursuant to SBX7 7 because federal, state and local laws establish communications services as being critical to public health and safety.

There are a number of federal, state, and local laws and regulations establishing that communications services are critical to public safety.

For example, the state Warren-911-Emergency Assistance Act, California Government Code section 53100, et seq., enacted in 1987, established "911" as the statewide emergency number. In adopting the statute, the Legislature declared, "It is the purpose of this act . . . to encourage units of local governments and combinations of such units to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number "911" seeking police, fire, medical, rescue, and other emergency services."

The Federal Communications Commission (FCC) requires that all wireless carriers transmit emergency 911 calls to emergency assistance providers. (47 C.F.R. § 20.18.) The FCC is also in the process of implementing the Warning, Alert and Response Network Act ("WARN Act") (42 U.S.C. § 1201, et seq.) adopted in 2007, with the goal of establishing a comprehensive mobile alerting system that will integrate wireless emergency alert systems at the federal, state, and local levels.

The communications industry provides critical infrastructure for numerous federal, state and local public and private sector services that are tied to public safety, including law enforcement, first responders, security services and more. Therefore, process water that is needed to operate communications equipment merits protection under the proposed regulation.

Conclusion

The lack of guidelines in the proposed regulation for protecting communications process water from harmful reductions that will undermine public health and safety means that enforcement of the proposed regulation, if adopted, may conflict with SBX7 7's express provisions upholding public health and safety.

Therefore, we respectfully request that the proposed regulation be revised to allow urban water suppliers to include in their urban water management plans, due July 1, 2011, exclusions or protections for process water used to provide communications services.

We appreciate your consideration and the opportunity to provide comments. We would be happy to answer any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Dane Snowden", with a long horizontal flourish extending to the right.

K. Dane Snowden
Vice President External and State Affairs

CC: Steve Carlson, Steve Carlson and Associates, CA Government Affairs Counsel